IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8056 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUNICIPAL STAFF UNION

Versus

NAVSARI NAGARPALIKA

Appearance:

1. Special Civil Application No. 8056 of 1991

MS PARUL R PATEL for Petitioner No. 1

MR DD VYAS for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 13/01/2003

ORAL JUDGEMENT

#. By filing instant petition under Articles 226 and 227 of the Constitution of India, the petitioner, i.e. the

Municipal Staff Union of Navsari Nagarpalika, has prayed to issue a Writ of Mandamus or any other appropriate Writ, order or direction to restrain the Navsari Nagarpalika from giving any appointment to any person who is not an employee of the Nagarpalika, on the posts which are covered by award dated March 31, 1979, rendered by the Industrial Tribunal, Gujarat, in Reference (IT) No.463 of 1978. The petitioner has further prayed to direct the Navsari Nagarpalika to fill up the post of Shop and Establishment Inspector from amongst the employees employed by the said Nagarpalika.

#. The petitioner claims that it is a recognized union of the employees employed with Navsari Nagarpalika, Navsari. According to the petitioner, the service conditions of the employees of the Nagarpalika were governed by various settlements and awards passed by the Industrial Tribunal, Gujarat, from time to time, and as per the award dated March 31, 1979, rendered in Reference (IT) No.463 of 1978, the respondent-Nagarpalika is obliged to make appointments on the posts falling vacant from the staff of Nagarpalika in accordance with seniority and efficiency. What is claimed by the petitioner is that without any lawful justification, the respondent-Nagarpalika proposes to give appointment to a candidate on the post of Shop and Establishment Inspector who is not one of the employees of the Nagarpalika and is determined to commit breach of the award, which is illegal. Under the circumstances, the petitioner has filed instant petition and claimed reliefs to which reference is made earlier.

#. On service of notice, Mr.Mohamed Hussein H.Kapadia, Chief Officer of the Navsari Nagarpalika, has filed reply affidavit controverting the averments made in the petition. In the reply, it is stated that the post of Shop and Establishment Inspector is an isolated post and not covered within the scope of settlement arrived at between the Nagarpalika and the petitioner-Union. What is mentioned in the reply is that in view of the provisions of Section 19 of the Industrial Disputes Act, 1947, the operation of the settlement/ award remains in force for a maximum period of one year from the date on which the settlement or award becomes enforceable and as the award dated March 31, 1979, is not enforceable, the petition is liable to be dismissed. Further, it is stated that after the award dated March 31, 1979, a subsequent award is passed in the year 1989 in Reference (IT) No.108 of 1989 by the Industrial Tribunal, Surat, and therefore, the petitioner-Union is not justified in claiming reliefs on the basis of award dated March 31,

1979.

#. Earlier, the petitioner-Union was represented by learned lawyer Ms.Parul R.Patel. Mr.Dhaval D.Vyas, learned counsel for the respondents had stated at the Bar that Ms.Parul R.Patel, learned advocate of the petitioner, has settled in U.S.A. Therefore, by an orer dated October 10, 2002, the office was directed to issue notice to the petitioner calling upon it to make necessary arrangement for its appearance either through its authorized officer or a lawyer. Though the notice has been duly served, the petitioner has not made any arrangement for its appearance either through its authorized officer or a lawyer. Further, this is an old matter of 1991, and is already listed on fourteen different occasions for final hearing. Under the circumstances, I have heard the learned counsel for the respondents and taken into consideration the documents forming part of the petition. The fact that the award dated March 31, 1979, rendered by the Industrial Tribunal, Gujarat, in Reference (IT) No.463 of 1978 is not enforceable after a period of one year from the date of its enforceability is not disputed by the petitioner by filing rejoinder affidavit. Similarly, the statement made in the affidavit-in-reply to the effect that the post of Shop and Establishment Inspector is an isolated post and not covered within the sweep of award dated March 31, 1979, is also not controverted by the petitioner by filing affidavit-in-rejoinder. Moreover, the statement on oath to the effect that after award dated March 31, 1979, a subsequent award is passed in the year 1989 in Reference (IT) No.108 of 1989 by the Industrial Tribunal at Surat, and therefore the petitioner is not entitled to the reliefs claimed in the petition is also not denied by petitioner by filing rejoinder affidavit. In view of what is stated by the Chief Officer of the Navsari Nagarpalika in his affidavit in reply, I am of the opinion that the reliefs claimed in the petition cannot be granted and the petition is liable to be dismissed.

#. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no orders as to costs. Interim relief granted earlier shall stand vacated.

(J.M.Panchal, J.)
(sunil)